IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08/04/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1248 of 1993

Rangasamy Gounder .. Appellant

-Vs-

Rathinambal .. Respondent

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 29.11.1991 and made in A.S.No.96 of 1989 on the file of the Subordinate Judge, Udumalpet, confirming the judgment and decree dated 1.8.1989 and made in O.S.No.8 6 of 1988 on the file of the District Munsif, Pollachi.

!For Appellant : Mr.T.R.Rajaraman

^For Respondent : Mr.V.Ravi

:JUDGMENT

The defendant in a suit for maintenance is the appellant herein.
2. The respondent herein filed a suit for maintenance, alleging that the marriage between herself and the defendant took place in the year 1976 in accordance with the Hindu rites and ceremonies; that they lived for a short period of three years; that by cruel treatment, he drew her away; that even the panchayat did not fructify; that she has been living in her parents' home; that he was having Rs.30,000/- in his deposit; that she was unable to support herself, and hence, there should be a decree directing the defendant to pay a sum of Rs.500/- per month towards maintenance and for future maintenance also.
3. The suit was resisted by the defendant, stating that the case of the plaintiff that a marriage took place between himself and herself is false; that he married one Rasammal, 20 years prior to the initiation of the proceedings; that there were quarrels between the father of the plaintiff and the defendant over money transactions; that aggrieved over the same, she has given a false case, and hence, it was to be rejected.
4. The trial Court framed the necessary issues, tried the suit and granted maintenance. An appeal by the aggrieved defendant was dismissed by the first appellate Court. Hence, this second appeal at the instance of the defendant.
5. At the time of admission, the following substantial question of law was formulated by this Court:
"Whether the learned Subordinate Judge was right in concluding that the

plaintiff was the second wife of the defendant based on an alleged admission in the written statement when there was no such admission of fact by the defendant?"

6. This Court heard the learned Counsel for the appellant and also the learned Counsel for the respondent on those contentions.

7. After careful consideration of the rival submissions and scrutiny of the materials, this Court is of the considered opinion that the judgments of both the Courts below cannot be sustained in law.

8. It was a suit for decree for maintenance on the grounds that the marriage between the plaintiff and the defendant took place in the year 1976 in accordance with the Hindu rites and customs; that they have been living for a period of three years; that she was thrown away; that she could not maintain herself, and hence, she comes forward with the claim for maintenance. What was all contended by the defendant before the lower Courts was that there was no marriage that took place between the plaintiff and the defendant in 1976; but, he already married one Rasammal, and hence, the claim was to be rejected. The contention put forth by the defendant that he married one Rasammal even prior to the marriage in question, and the said marriage is in subsistence has been well admitted by the plaintiff in her evidence. It is not the case of the plaintiff that the said marriage of the defendant with Rasammal, which took place earlier, was ended in divorce. Hence, the said marriage was a subsisting one. Even assuming that the alleged marriage of the plaintiff with the defendant has taken place in the year 1976, it should have been one taken place during the subsistence of the earlier marriage, and thus, from the marriage what is alleged by the plaintiff, she cannot have the status of a legally wedded wife, as contemplated in law, who alone can sustain a case for maintenance. The wife includes not only the legally wedded wife, but also the divorced wife. In the instant case, even assuming to be true that the marriage between the plaintiff and the defendant has taken place during the subsistence of the marriage between the defendant and the said Rasammal, the plaintiff cannot maintain a suit for maintenance. Without appreciation of the legal position, both the Courts below have granted the relief of maintenance. This Court is of the firm view that the judgments of the lower Courts cannot be sustained.

9. The learned Counsel for the appellant relied on a decision reported in AIR 1987 BOMBAY 182 (SHANTARAM TUKARAM PATIL AND ANOTHER VS. DAGUBAI TUKARAM PATIL AND OTHERS). It was a case arising out of a property dispute between the parties. This Court is of the view that the said decision is not applicable to the present facts of the case.

10. The decision relied on by the learned counsel for the respondent and reported in AIR 1966 MADRAS 394 (A.P.K.NARAYANASWAMI REDDIAR VS. PADMANABHAN (MINOR) & OTHERS) is squarely applicable to the facts of this case. In the said judgment, it has been held thus:

"Marriage being a status regulated and recognised by law, not merely the factum of marriage or union that matters, but also whether it is in accordance with the requirements of the law in order that it may be a valid marriage. The obligation to pay maintenance, flows from marital relationship. But, if under the personal law, which governs the parties, the marriage is not valid, it is not possible to assign a status to the unfortunate woman in between that of a concubine and that of a wife. There is no such thing as an '"illegitimate wife", though the phrase picturesquely portrays the real state

of affairs.
Section 25 cannot be construed in such a manner as to hold that notwithstanding the nullity of the marriage, the wife retains her status for purposes of applying for alimony and maintenance. The proper construction of S.25 would be that where a marriage is admittedly a nullity, the section will have no application. But where the question of nullity is in issue and is contentious, the Court has to proceed on the assumption until the contrary is proved, that the applicant is the wife. It is in that sense that S.25 should be appreciated."
In the instant case, the plaintiff cannot seek the relief of maintenance, in view of the facts and circumstances of this case.

11. In view of the reasons stated above, this second appeal is allowed, setting aside the judgments and decrees of the lower Courts and leaving the parties to bear their costs. O.S.No.86/88 is dismissed.

Index: yes
Internet: yes

To:

1. The Subordinate Judge
Udumalpet
2. The District Munsif
Pollachi
3. The Record Keeper
V.R. Section
High Court, Madras.

nsv/